*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION No.15334 of 2003

%30-11-2004

National Institute of Dental Technology (NIDT) rep.by its Proprietor M.V.Thomas, Raghavendra Complex, 1st Floor, Habsiguda 'x' cross roads,Hyderabad.

..PETITIONER

Vs.

$ The Dental Council, Hyderabad, rep. by its Secretary, Aiw-E-Galib Marg, Kotla Road, New Delhi and others.

..RESPONDENTS

! COUNSEL FOR PETITIONER: Mr. M.L.Ali

^ COUNSEL FOR RESPONDENT Nos.1 and 2: Mr.S.Niranjan Reddy

COUNSEL FOR RESPONDENT No.3: G.P. for Medical, Health & Family Welfare

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>HEAD NOTE:

?CASES REFERRED:

1. AIR 1994 SC 595

2. (2001) 5 SCC 486

3. (2002) 8 SCC 481

4. AIR 1993 SC 2178 = (1993) 1 SCC 645

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTIETH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION NO : 15334 of 2003

Between:

National Institute of Dental Technology (NIDT) Rep by its Proprietor M.V Thomas, Raghavendera Complex, 1st Floor, Habsiguda 'X' Roads, Hyderabad.

..... PETITIONER

AND

1 The Dental Council, Hyderabad rep by its Secretary,
Aiw-E-Galib Marg, Kotla Road, New Delhi - 110 002.
2 A.P State Dental Council, Hyderabad. rep by its Registrar.
C/o. Govt. Dental College, Afzalgunj, Hyderabad.
3 Govt. of A.P. rep by its Secretary,
Health, Medical and Family Welfare (K2) Department, Secretariat,
Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, in the nature of Writ of Mandamus or any other appropriate Writ, direction order declaring the letter
Ref.No.446/APSDC/2000, of the A.P. State Dental Council, Hyderabad, as illegal and valid.

Counsel for the Petitioner: MR.M.L.ALI

Counsel for Respondents 1 and 2: Mr.S.NIRANJAN REDDY

Counsel for the Respondent No.3: GP FOR MEDICAL HEALTH & FAMILY WELFARE

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.15334 OF 2003

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ORDER:

National Institute of Dental Technology (NIDT) filed the present writ petition challenging two communications dated 14.06.2003 and 03.07.2003 sent by the second respondent herein. The first communication was addressed to NIDT, Hyderabad requesting them to obtain prior permission of Dental Council of India before starting dental technician course in the petitioner's institution. In the second communication, the second respondent requested Doctors (Dentists) to visit NIDT, enquire into the matter and submit a report within a fortnight with regard to running of dental technician course by NIDT without permission from Dental Council of India. The petitioner impugnes these two communications on the ground that the course known as 'operation of ceramic oven technology' is a course, which does not require any recognition by respondents 1 and 2 and therefore it does not come within the purview of these two bodies.

NIDT started an institution in Kochi in Kerala. It has its branches at Kochi, Kottayam, Trissur, Kozikode, Palakkad, Kannoor and Kollam. In 2003, it has also established institutions in Coimbatore and Bangalore and started such institution in Hyderabad as well, offering instruction in Dental Ceramic Technician course so as to provide technical know-how in ceramic technology. The petitioner received the communication dated 14.06.2003 from the second respondent directing NIDT to obtain prior permission from Dental Council of India and that the request for registration of students will not be entertained by the second respondent. The petitioner sent a reply on 02.07.2003 informing the second respondent that NIDT does not require any permission from the Dental Council of India and that the students trained by NIDT would not seek any registration and recognition of the second respondent. However, second respondent by letter dated 03.07.2003 appointed Dr.K.Rajendra and Dr.B.Lakshmana Rao as Inspectors to investigate the matter. Assailing which, the writ petition is filed.

Respondents 1 and 2 filed a common counter affidavit opposing the writ petition. It is stated that establishment of NIDT itself is in violation of provisions of Dentists (Amendment) Act, 1993 (for brevity, the Act) and that the petitioner has to obtain necessary permission to start dental technology course. NIDT started dental course without obtaining prior permission of Dental Council of India. The petitioner advertised the course mentioned with a caption "Job anywhere abroad", misleading the students/parents, that a press release was issued cautioning the students and by letter dated 14.06.2003, the petitioner was requested to obtain permission from the Dental Council of India. The advertisement issued by NIDT is misleading as it is offering Dental Ceramic Technician Course, which requires prior permission from respondents 1 and 2. As per the Act, no one is allowed to start dental courses without obtaining prior permission from the first respondent and the students in approved institutions are to be taught by qualified staff as per syllabus prescribed therefor. The proprietor of NIDT is neither qualified Doctor nor obtained prior permission from the first respondent and therefore, the petitioner has violated the provisions of the Act.

The learned counsel for the petitioner, Mr.M.L.Ali, vehemently contends that as NIDT

is not imparting any course of study or training for grant of recognised dental qualification mentioned in the Schedule to Dentist Act, 1948, the said Act has no application to NIDT. There is no provision in the said Act for obtaining prior permission from Dental Council of India for starting institution like NIDT because the candidates trained by the petitioner do not seek any registration under the Act but they work under registered Dental Mechanics. The students, the petitioner's counsel would contend – do not work independently nor they make/repair dentures or dental appliances. Therefore, the action of the respondents 1 and 2 in insisting upon the petitioner to obtain prior permission from the first respondent is illegal and without jurisdiction. The course conducted by the petitioner institution is not the same as dental mechanical course, which is of two years taught in dental colleges covering subjects like applied physics, mechanics, applied chemistry, applied oral anatomy, dental materials and metallurgy. But the students trained by the petitioner institution are taught the advance methods of ceramic technology and the course offered by the petitioner institution is totally different and the basic educational qualifications are also different. The petitioner institution has a fundamental right under Article 19(1)(g) of the Constitution of India to establish training institution and the respondents 1 and 2 cannot prevent the petitioner from exercising such right.

The learned counsel for respondents 1 and 2, Sri S.Niranjan Reddy, submits that any institution offering any type of dental course requires prior permission of the first respondent and therefore the very establishment of NIDT is illegal. He submits that the petitioner has issued misleading advertisements, which tend to create wrong impression among the aspiring students and that the students may think that the course offered by NIDT is equivalent to dental education course offered in dental colleges. Therefore, he submits that the respondents 1 and 2 are justified in issuing impugned letters.

So as to regulate the profession of dentistry and for the purpose of constitution of Dental Councils and State Councils, the Parliament of India enacted Dentists Act, 1948. By Amendment Act of 1993, Section 10-A was inserted. According to this provision, notwithstanding anything contained in the Dentists Act or any other law, no person shall establish dental college without prior permission of the Central Government in accordance with the provisions of the Act. Under Section 13(b) of the Act, no person shall be entitled to be enrolled in any register as a dentist or dental hygienist unless such person has undergone training in the prescribed manner. As per Section 46 of the Act, only persons who are registered with State Dental Council as dentists or dental hygienists are entitled to practice the profession in dentistry.

Therefore, there cannot be any doubt that unless and until a person is registered with Dental Council or State Council, he or she cannot practice the profession. The supremacy in matters of education in dentistry is conferred upon Dental Council of India and State Councils and no authority can take any action contrary to the policy laid down by Dental Council of India. In **State of Punjab v Renuka Singla** and **Dental Council of India v Subharti K.K.B.Charitable Trust**, the Supreme Court has laid down that the final say in matters of dental education lies with Dental Council of India. Therefore, the contention of the respondents 1 and 2 that any educational institution offering course in dental education requires prior approval of

Dental Council of India has to be countenanced. But recognition or prior approval by Dental Council of India for starting an institution to offer any course is not required in all situations and in all circumstances, especially when an institution like the petitioner admittedly offers a course in dental ceramic technology.

Even according to respondents 1 and 2, dentists and dental technicians have to obtain registration before taking up practice as such dentists and dental technicians. If a person does not require any registration, and such person sets up practice, it may be legitimate for respondents 1 and 2 to initiate action against such person including criminal action. But when such person or an institution offering any course on oath deposes before this Court that they or their students do not require any registration and those students only work as assistants under registered dental technicians, such institution does not require registration with Dental Council of India. Equally, the students who complete the course/courses offered by NIDT will have no right to request respondents 1 and 2 to enroll them in the register of dental technicians maintained under the provisions of the Act.

A reference may be made to the decision of the Constitution Bench of eleven learned Judges of the Supreme Court in **T.M.A.Pai Foundation v State of Karnataka.** Therein the apex Court considered, *inter alia,* the question whether there is a fundamental right to set up an educational institution? While overruling the dicta in **Unnikrishnan, J.P. v State of A.P.,**, the majority judgment in **T.M.A.Pai Foundation case** (supra) laid down that every person has a fundamental right to establish, to run an educational institution but such right does not extend to seek recognition or affiliation from a competent body or organization. In paragraph 24, it was laid down:

> While the conclusion that "occupation" comprehends the establishment of educational institutions is correct, the proviso in the aforesaid observation to the effect that this is so provided no recognition is sought from the State or affiliation from the university concerned is, with utmost respect, erroneous. **The fundamental right to establish an educational institution cannot be confused with the right to ask for recognition or affiliation. The exercise of a fundamental right may be controlled in a variety of ways.** For example, the right to carry on a business does not entail the right to carry on a business at a particular place. The right to carry on a business may be subject to licensing laws so that a denial of the licence prevents a person from carrying on that particular business. The question of whether there is a fundamental right or not cannot be dependent upon whether it can be made the subject-matter of controls.
>
> (emphasis supplied)

Therefore, the right of a person to establish such an institution as flowing from Article 19(1)(g) of the Constitution of India cannot be denied but the same does not confer any right on NIDT or its students who undergo dental ceramic technology course in NIDT to seek registration or enrollment in the register of members maintained by respondents 1 and 2. As a necessary corollary, all the students who undergo any course in any discipline or specialty of dentistry have no right to practice

independently. Indeed, in paragraphs 5, 6(b) and 6(c) of the affidavit accompanying the writ petition, the petitioner institution admits this legal position.

In the result, for the above reasons, the writ petition is disposed of with the above observations and directions. Respondents 1 and 2 shall take necessary action in the light of the observations in this judgment. There shall be no order as to costs.

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(V.V.S.RAO,J)

.11.2004.

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Note: LR copy be marked

(By order)

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To

(One fair copy to the Hon'ble Sri Justice V.V.S.RAO for his Lordship's kind perusal)

1 The Secretary, Aiw-E-Galib Marg, Kotla Road, New Delhi - 110 002.

For Dental Council, Hyderabad.

2 The Registrar, C/o. Govt. Dental College, Afzalgunj, Hyderabad.

For A.P State Dental Council, Hyderabad.

3 The Secretary, Govt. of A.P., Health, Medical and Family Welfare (K2)

Department, Secretariat, Hyderabad.

4 8 LR copies.

5 The Under Secretary, Union of India, Ministry of Law, Justice and

Company Affairs, New Delhi.

6 The Secretary, A.P. Advocates Association Library, Hyderabad.

7 2 CCs to the G.P. for Medical, Health and Family Welfare, High Court

Buildings, Hyderabad (OUT).

8 2 CD copies.